

FROM THE OFFICE OF THE JUSTICE MINISTER

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FROM: DAVID GRAHAM
DATE: 8 January 2025
TO: KATHY O'HANLON

Business Area: Criminal Justice Policy and Legislation Division
Access to Justice Directorate

Issue: Justice Bill Amendments – Supporting Briefing for the Oral Briefing Session

Restrictions: None.

Action Required: The Committee is asked to note this written briefing ahead of the oral briefing on 23 January 2025

Officials Attending: Maura Campbell, Head of Criminal Justice Policy and Legislation Division
Andrew Laverty (Reform of Rehabilitation Periods Amendments)
Lorraine Ferguson-Coote (Repeal of Vagrancy Amendments)
Máire Sheehan (Live Links Amendments)

Introduction

This briefing provides an overview of the three sets of proposed Justice Bill amendments due to be discussed at the oral briefing session on 23 January 2025.

2. We have provided background on each of the policy areas, along with further detail on what the amendments aim to do and why they are needed in the form of separate appendices to this letter, as follows:

- Appendix A – Reform of Rehabilitation Periods
- Appendix B – Repeal of Vagrancy

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Department of
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An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

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- Appendix C – Live Links (Courts & Tribunals)

3. I trust this information is helpful to Committee Members ahead of the oral briefing.



David Graham
DALO

Encs: Appendices A-C

Reform of Rehabilitation Periods in Northern Ireland Amendments

Background

1. The Rehabilitation of Offenders (Northern Ireland) Order 1978 (“the 1978 Order”) makes it possible for most convictions to become “spent”, to facilitate former offenders being rehabilitated.
2. This means that, for employment and other purposes, their convictions need not be declared if they are asked for details of their criminal history.
3. The period that must pass before a conviction can become spent is known as “the rehabilitation period” and is currently of a fixed duration, dependant on the length of sentence.
4. In summary, the main rehabilitation periods for the most common convictions in this jurisdiction are as follows:

Sentence	Rehabilitation Period
A fine	Fixed period of 5 years
A sentence of imprisonment of 6 months or less	Fixed period of 7 years
A sentence of imprisonment of over 6 months and up to 30 months	Fixed period of 10 years
A sentence of imprisonment of over 30 months	Can never become spent and must always be declared

5. Acknowledging that the provisions of the 1978 Order hadn’t kept pace with changes in sentencing practice, with longer sentences being imposed than when rehabilitation periods were first established, Minister Long commissioned a review of rehabilitation periods in Northern Ireland in February 2020.

6. A summary of responses and way forward document was prepared and published, which can be found at: [rehabilitation of offenders consultation - summary of responses and way forward.pdf](#)

What the amendments do

7. The amendments deliver the legislative reforms set out in the summary of responses and way forward document to reduce rehabilitation periods for existing convictions and to allow more convictions to become capable of becoming spent, as below:

Sentence	Rehabilitation Period [^]
A compensation order	The date on which the payment is made in full
A community, youth rehabilitation or relevant order	The day provided for by or under the order as the last day on which the order is to have effect
Fine	1 year
Sentence of imprisonment of 1 year or less	Length of sentence imposed <u>plus</u> 1 year **
Sentence of imprisonment of 1 - 4 years	Length of sentence imposed <u>plus</u> 4 years **
Sentence of imprisonment of between 4 and 10 years	Length of sentence imposed <u>plus</u> 7 years **

* The rehabilitation period for this regime is made up of the full length of the sentence imposed followed by the buffer period.

** Rehabilitation periods are halved for offenders aged under 18 at date of conviction

8. The amendments also create an order making power to allow the Department to establish a review mechanism for some additional convictions not captured by the revised arrangements (following further policy development and consultation).

9. The review mechanism is intended to mitigate against future legal challenges against the replacement of one 'bright line' upper limit with another - as to where the upper limit was set and why – and to address aspects of a Court of Appeal judgment that ruled that the absence of any appeal route for those whose convictions fell outside the terms of the scheme was disproportionate.

Why are the amendments needed

10. The main purpose of legislation governing the rehabilitation of offenders is to boost the chances of former offenders gaining employment and living within the law by helping them to put their past convictions behind them.
11. By reducing reoffending through the rehabilitation of offenders we are aiming to ensure there are fewer victims of crime, that our communities are safer and that less money is spent on repeat offenders circulating within the justice system.
12. Rehabilitation periods in Northern Ireland have remained essentially unchanged since they were first introduced in 1978.
13. Since then, changes in sentencing practice have meant that longer sentences are now being imposed than when rehabilitation periods were first established. In addition, the bar on custodial sentences of over 30 months being treated as spent in Northern Ireland may act as a barrier to employment for former offenders who have not re-offended since their release.
14. The reforms also reflect developments in neighbouring jurisdictions – thereby ensuring that ex-offenders in Northern Ireland are not treated less favourably than those in other jurisdictions - and seek to address aspects of court judgments applicable to the regime here, particularly in relation to the absence of any review mechanism.

Safeguards

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15. There are certain specified jobs and professions where applicants must always declare their convictions, even where they are considered spent.

16. These are known as 'excepted' employments or professions and they can include working or coming into contact with children or vulnerable people, working in financial institutions, the medical world and in law enforcement, amongst others, where a particular conviction could have a strong bearing on an individual's suitability for employment in that area.
17. For Northern Ireland purposes, these exceptions are set out in the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 and the employments and professions specified as 'excepted' therein are not being amended as part of this reform exercise.
18. The Department is, therefore, satisfied that that there is no increased risk to public safety as a result of the proposed reforms on the grounds that all spent and unspent conviction data would continue to be disclosed for sensitive employments, such as working with children, young people and vulnerable adults.

Repeal of Vagrancy Amendments

Background

1. Currently, section 4 of the Vagrancy Act 1824 ('the 1824 Act') and section 3 of the Vagrancy (Ireland) Act 1847 ('the 1847 Act') are used by PSNI to address criminal behaviours perpetrated by those who are rough sleeping or begging.
2. Section 4 of the 1824 Act has been repealed in Scotland and repeal provision has been made for England and Wales, but not yet commenced. Section 3 of the 1847 Act has been repealed in the Republic of Ireland.

Why are the amendments needed

3. There has been considerable criticism, by the media, some MLAs and homeless support organisations, of the use of what is considered 'outdated' legislation, alleging that it is being used to criminalise homelessness.
4. Begging and rough sleeping are often linked to underlying issues such as homelessness, poverty, alcohol and drug addiction, poor mental health, sexual and domestic abuse and family breakdown.
5. Typically, they involve some of the most vulnerable people in our society. These are complex and cross cutting issues which the Department considers require a multi-agency and multi-societal response of support rather than criminalising people simply because of their personal circumstances.

Review/Consultation

6. A review of the current vagrancy legislation for Northern Ireland was carried out by the Department, in conjunction with PSNI, to determine whether it should be repealed and, if repealed, whether there was an identifiable gap in the law which would require replacement legislation.
7. The findings of this review are reflected in the public consultation which was launched by the Department on 11 November 2024.

8. It seeks views on repeal of the current vagrancy legislation, in so far as it would decriminalise rough sleeping and begging in Northern Ireland, and whether respondents consider that this would leave any significant gaps in the criminal law, taking into account the range of other offences available to deal with public order, disorderly behaviour and harassment in public places.
9. To ensure the best possible opportunity for receipt of responses, additional time was factored into the consultation timeframe to account for the Christmas holiday period. Responses were requested by 21 January, and the Department will provide an update to the Committee once these have been analysed and considered.

What the amendments do

10. The proposals for legislative change are intended to repeal section 4 of the Vagrancy Act 1824 and section 3 of the Vagrancy (Ireland) Act 1847.
11. We do not propose the introduction of any replacement legislation upon repeal, on the basis this would essentially have the effect of re-criminalising people in a similar way to the provisions that are to be repealed.
12. We consider that where relevant behaviour reaches the criminal threshold, there are existing harassment, disorderly behaviour and public order offences available that can be used in helping the police to deal with those incidents, regardless of an individual's personal circumstances.

Live Links (Courts and Tribunals) Amendments

Background

1. A live link is the term commonly used for audio and video-conferencing technology, which in this instance can be used by courts and tribunals for remote hearings.
2. The Department's overall aim by providing for the wider use of live links is to contribute to the continued outworking of the Vision 2030 Statement by the Northern Ireland Courts and Tribunals Service (NICTS). Vision 2030 aims to provide processes and laws including wider digitalisation where it is appropriate so that the justice system can better meet the needs of people now and in the future. Throughout the engagement exercises conducted to date (2021, 2022 and 2023), responses received have indicated the wider use of live links achieves the needs of a modern justice system.
3. The proposed legislation not only replaces the temporary provisions contained in the Coronavirus Act 2020 (which allowed courts and tribunals to address critical business needs, maintain progress on providing access to justice and progress the recovery of the justice system), but also updates and consolidates the body of law that has evolved over the past 20 years in respect of remote hearings and the provision of evidence remotely. .
4. The existing provision for live links to be used as a 'special measure' is unaffected by the proposed legislation although it could facilitate increased use of Remote Evidence Centres, which can reduce the risk of re-traumatisation of vulnerable victims and witnesses as well as contribute to improved witness participation in the criminal justice process.

Why are the amendments needed

5. The justice system is currently reliant on the live link provisions contained within the Coronavirus Act 2020 which require extension via secondary legislation on a regular basis. New primary legislation is necessary to retain the wider use of live links in courts and tribunals going forward.
6. The proposed amendments do not simply replicate the provisions in the 2020 Act, which were brought forward at speed in response to a public health emergency.

They aim to meet our longer-term needs, for both criminal and civil proceedings, by being more comprehensive, including by replacing and updating the provisions contained in the Criminal Justice (Northern Ireland) Order 2004, the Criminal Justice (Northern Ireland) Order 2008 and the Justice Act (Northern Ireland) 2015.

7. They also reflect legislative developments in neighbouring jurisdictions which enable the conduct of court and tribunal cases remotely using live links within those jurisdictions.
8. A public consultation indicated almost unanimous support for retaining the facility of remote hearings through using live links, provided a court or tribunal considers that their use is in the interests of justice.

What the amendments do

9. The proposed new model is broadly similar in approach to the temporary provisions, as it is based on an 'interests of justice' test, but will also include:
 - a statutory duty that the court when determining the 'interests of justice' should have regard to any guidance issued by the Lady Chief Justice. In regard to inquests a similar requirement would be introduced for them to have regard to any guidance issued by the Presiding Coroner.
 - a requirement for the court or tribunal to:-
 - hear the views of the parties and/or the witness on the matter of the use of live links for the hearing or part of a hearing,
 - satisfy itself that 'live links' enable the person giving evidence (P) 'to see and hear all other persons participating in the proceedings who were not in the same location as P, although not necessarily any members of the public attending the hearing; and allow all them to see and hear P before determining the statutory test is met, accompanied by a caveat addressing those who are unable to hear and see by reason of impairment of hearing

- or eyesight or by any order of the court or tribunal as part of ‘special measures’; and
- where the determination is to refuse the use of live links, to state its reasons for concluding the use of live links was not ‘in the interests of justice’.
 - the retention of any live link provision which is ordered by a court or tribunal as one of a range of adjustments or ‘special measures’ available for those who satisfy the requirements set out within the Criminal Evidence (Northern Ireland) Order 1999 or who require a “grounds rule” hearing to enable their effective participation; there is to be no diminution of current entitlements for vulnerable witnesses or defendants.
 - in civil or criminal proceedings where the only party in a hearing or application is a public official, a presumption that attendance would be by electronic means unless the court directs physical attendance. This would cover, for instance, ex parte applications for items such as a search warrant.
 - a power to make secondary legislation in regard to the designation of “expert witnesses”, as the provisions created within section 52 of the Justice Act (NI) 2015 are to be replaced within this bill.
 - there may also be provision made for court rules as well as regulations that could specify additional circumstances or matters a court should have regard to or take account of in determining the use of live links, should the use of the proposed provisions not provide the desired transparency and consistency for users as to when live links may or may not be considered ‘in the interests of justice’.
 - a power to vary as well as rescind a live link direction.
 - provision which aims to ensure the public can be enabled to see or hear the proceedings if they were conducted wholly remotely or where there was

identified by a court or tribunal a need to transmit the proceedings to another identified location 'in the interests of justice'.

- the same protection for the solemnity and integrity of proceedings, whether a person is participating in-person or remotely, including the prevention of unauthorised recording or transmitting of a live hearing as well as unlawful interruption of that hearing. Those attending remotely will be subject to the same requirements that their evidence be truthful or be held to account for perjury as would occur had they been present in the courtroom.